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Sand Park Capital, LLC and
Cedar Advance, LLC*

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – SAN FERNANDO DIVISION

In re

MR. TORTILLA, INC.,

Debtor,

Case No. 1:24-bk-10228-VK

**SECURED CREDITOR, SAND PARK
CAPITAL, LLC’S, PARTIAL
OBJECTION TO DEBTOR’S
EMERGENCY MOTION FOR ORDER
AUTHORIZING INTERIM USE OF
CASH COLLATERAL PURSUANT TO
11 U.S.C. §363 (DE 12); OBJECTION
TO LODGED ORDER AFTER
FEBRUARY 23, 2024 HEARING ON
THAT EMERGENCY MOTION (DE
45); AND DEMAND FOR THE SAME
ADEQUATE PROTECTION
PROVISIONS APPLICABLE TO
AMAZON (DE 45)**

Date: March 7, 2024

Time: 1:30 p.m.

Place: Via Zoom Per Notice of Hearing
Courtroom 301, 21041 Burbank Blvd.,
Woodland Hills, CA 91367

Sand Park Capital, LLC (“Sand Park”) respectfully submits this partial opposition

Case No. 1:24-bk-10228-VK

1 to the Debtor’s Emergency Motion for Order Authorizing Interim Use of Cash Collateral
2 Pursuant to 11 U.S.C. §363 (Docket Entry 12). In addition, Sand Park opposes the order
3 lodged by the Debtor with respect to the February 23, 2024 hearing on the Motion
4 (Docket Entry 45) as it does not conform to the Court’s orders at that hearing. Finally,
5 Sand Park demands the same adequate protection provisions of paragraphs 6 and 7 of the
6 proposed Amazon Capital Services, Inc. (“Amazon”) stipulation (Docket Entry 45) and,
7 provided such adequate protection is provided, supports the continued use of cash
8 collateral to operate the business based on the supplemental budget offered by the Debtor
9 (Docket Entry 48).

10 **I. Bankruptcy Code Section 363(c)(2) Requires Sand Park To Be Adequately**
11 **Protected As a Condition of the Debtor’s Use of Its Collateral.**

12 The Motion (Docket Entry 12) accurately acknowledges that Bankruptcy Code
13 Section 363(c)(2) establishes a special requirement with respect to “cash collateral”, by
14 providing that a debtor-in-possession may not use, sell or lease “cash collateral” unless (i)
15 such entity that has an interest in such collateral consents or (ii) the court, after notice and
16 a hearing, authorizes such use, sale or lease. Missing from the Motion, however, is the
17 express prohibition of use of cash collateral without adequate protection, stated in
18 subsection (e) of Section 363. That section states, unequivocally, that “Notwithstanding
19 any other provision of this section, at any time, on request of an entity that has an interest
20 in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the
21 court, with or without a hearing, ***shall prohibit or condition such use***, sale, or lease as is
22 necessary to provide adequate protection of such interest....” 11 U.S.C. §363(e).
23 Emphasis added. The use of the word “shall” reflects a strict mandate.

24 Thus, the Code squarely prohibits use of cash collateral without adequate protection
25 being afforded to Sand Park. Adequate protection should be guided by the provisions of
26 Bankruptcy Code section 361:

27 When adequate protection is required under section 362, 363, or 364 of this

1 title of an interest of an entity in property, such adequate protection may be
2 provided by—

3 (1) requiring the trustee to make a cash payment or periodic cash payments to
4 such entity, to the extent that the stay under section 362 of this title, use, sale, or
5 lease under section 363 of this title, or any grant of a lien under section 364 of
6 this title results in a decrease in the value of such entity's interest in such
7 property;

8 (2) providing to such entity an additional or replacement lien to the extent
9 that such stay, use, sale, lease, or grant results in a decrease in the value of such
10 entity's interest in such property; or

11 (3) granting such other relief, other than entitling such entity to compensation
12 allowable under section 503(b)(1) of this title as an administrative expense, as
13 will result in the realization by such entity of the indubitable equivalent of such
14 entity's interest in such property.

15 11 U.S.C. §361. Here, no such protections, adequate or otherwise, are afforded to Sand
16 Park.

17 **II. The Debtor Failed to Provide Sand Park Capital, LLC Adequate Protection.**

18 Sand Park is the only vulnerable secured creditor with respect to use of cash
19 collateral. Sand Park's collateral includes all tangible and intangible property. Based on
20 the Debtor's schedules, Sand Park is severely undersecured. See the Debtor's Schedule D,
21 Item 2.19 at Docket Entry 38, p. 25 of 65. Sand Park's claim is listed as \$4,654,334, and
22 its collateral is listed at \$407,954.06.¹ The Debtor appears to have set the value of Sand
23

24 ¹ Notably, Sand Park objects to the valuation of its collateral assigned by the Debtor in its Schedules. A
25 March 31, 2023 balance sheet provided by the Debtor to Sand Park reflects total assets of \$11,192,101,
26 including \$5,337,898 in Other Assets, none of which appear on the Debtor's Schedules, including
27 "Proprietary Marketing Content" of \$2,103,735 and R&D – Formulas & Recipes of \$1,902,939, all of
which are captured by Sand Park's collateral. Nevertheless, for purposes of this Motion, Sand Park is
relying on the Debtor's Schedules to highlight its entitlement to adequate protection.

1 Park's collateral by taking the Debtor's total assets from the Debtor's Summary of Assets,
2 \$1,830,574 (Docket Entry 39, Schedule A/B, Summary at Part 12), and subtracting the
3 fully secured SBA loan (\$688,130) (Docket Entry 39, Sch. D, item 2.25); and the fully
4 secured Amazon loan (\$751,540) (Docket Entry 39, Sch. D, item 2.2).²

5 Despite the fact that Sand Park appears woefully undersecured and exposed to the
6 diminution in cash collateral proposed, the Debtor offers Sand Park no adequate
7 protection whatsoever. There is no unencumbered cash or other assets upon which to draw
8 to fund operations. There is no evidence of historical operations having produced positive
9 cash flow. Instead, the Debtor offers only unsupported, unprecedented and self-serving
10 projections of optimistic results upon which neither the Court nor Sand Park could
11 reasonably rely. See Docket Entry 48. No insider is offering a cash infusion, as may be
12 required to fund negative cash flow. No equity in any collateral exists upon which Sand
13 Park or the Court can reasonably rely. And, there are no enforceable limits proposed on
14 the use of cash collateral. Sand Park's collateral is entirely exposed to disbursements and
15 diminution and there has been no effort whatsoever to protect Sand Park's security
16 interest. While the Debtor's motion gives lip service to the protections afforded secured
17 creditors under Bankruptcy Code sections 363 and 361, the Debtor's Motion offers none
18 to Sand Park. Accordingly, absent a provision offered to Sand Park of adequate
19 protection, the Motion must be denied.

20 **III. The Debtor's Proposed Use of Cash Collateral Should Be Conditioned On**
21 **Providing Sand Park Adequate Protection Consistent With That Offered To**
22 **Amazon.**

23 The adequate protection sought by Sand Park is less than the adequate protection to
24 which the Debtor has agreed to provide to Amazon. Sand Park is not insisting on every
25

26 ² The math does not work exactly, but for purposes of this objection, should suffice to give the Court the
27 perspective that while SBA and Amazon are adequately protected by the use of cash collateral, Sand Park
is clearly exposed to diminution in its collateral by the use of cash collateral sought by the Debtor.

1 provision in Docket Entry 45 that favors Amazon. However, Sand Park does demand that
2 paragraphs 6 and 7 apply identically to both Amazon and Sand Park. Specifically, in the
3 Order at Docket Entry 45, the Debtor agrees that Amazon is entitled to, among other
4 things, a \$5,000 monthly adequate protection payment (paragraph 6); and a Section
5 507(b) allowed administrative claim to replace liens on collateral (paragraph 7). Sand
6 Park is entitled to, and demands hereby, at least that level of adequate protection as a
7 condition of the Debtor's proposed use of Sand Park's cash collateral.

8 **IV. Debtor's Lodged Order After February 23, 2024 Hearing Must Comport With**
9 **The Court's Oral Orders At That Hearing.**

10 The Debtor's Lodged Order at Docket Entry 45 is written as if it was ordered by the
11 Court at the February 23, 2024 hearing. It was not.

12 Most obviously, the captioned hearing date is wrong. The hearing was on February
13 23, 2024, not February 22, 2024.

14 More importantly, the verbal ruling of the Court was simply that the Debtor was
15 permitted to pay pre-petition employee non-insider wages. The Court's verbal statements
16 were not that the Debtor could use cash collateral on an open-ended basis, as proposed by
17 this order. None of the terms involving payments to Amazon were disclosed, much less
18 agreed to by the Court.

19 The Court clearly did not grant the Debtor's proposed use of cash collateral through
20 March 7, 2024, as proposed in the lodged order at paragraph 1, or approve the "budget
21 attached to the Debtor's Cash Collateral Motion", as proposed in the lodged order at
22 paragraph 2. See Docket Entry 45. The Court approved payment of pre-petition wages and
23 continued the hearing to March 7, 2024. It did not grant blanket relief to be filled in later
24 by the Debtor and Amazon.

25 Sand Park generally does not object to the treatment of Amazon, provided that Sand
26 Park, too, is afforded adequate protection for the use of its cash collateral. In fact, Amazon
27 does not need adequate protection payments, as it is fully protected with or without such

1 protection. It enjoys an equity cushion, setoff and recoupment rights. And, it holds the
2 cash collateral as it comes in from sales. Sand Park does not object to payments to
3 Amazon, as that marketplace is clearly critical to the Debtor's reorganization prospects
4 and the value of the business, and its collateral. However, the Court should understand
5 that it is Sand Park, not Amazon, whose cash collateral is being diminished by the
6 Debtor's proposed use. With that perspective, the Court should fashion adequate
7 protection of Sand Park consistent with that offered to Amazon.

8 Dated: March 5, 2024

CORRIGAN & MORRIS, LLP

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10 By: /s/Brian T. Corrigan
11 Brian T. Corrigan
12 *Attorneys for Secured Creditor,*
13 *Sand Park Capital, LLC*
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PROOF OF SERVICE

I am a partner of Corrigan & Morris LLP, counsel for the secured creditor, Sand Park Capital, LLC. I am over the age of 18 years and not a party to the present action. My business address is 100 Wilshire Boulevard, Santa Monica, CA 90401 and 1425 Foothills Village Drive, Henderson, Nevada 89012.

On March 5, 2024, I served the foregoing document entitled **SECURED CREDITOR, SAND PARK CAPITAL, LLC'S, PARTIAL OBJECTION TO DEBTOR'S EMERGENCY MOTION FOR ORDER AUTHORIZING INTERIM USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. §363 (DE 12); OBJECTION TO LODGED ORDER AFTER FEBRUARY 23, 2024 HEARING ON THAT EMERGENCY MOTION (DE 45); AND DEMAND FOR THE SAME ADEQUATE PROTECTION PROVISIONS APPLICABLE TO AMAZON (DE 45)** by placing via email as stated below. The email transmission occurred before 5 p.m. on March 5, 2024.

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28 I declare under penalty of perjury under the laws of the United States that the foregoing is
29 true and correct and that this declaration was executed on March 5, 2024 at Henderson,
30 Nevada.

31 /s/ Brian T. Corrigan
32 Brian T. Corrigan

33 Case No. 1:24-bk-10228-VK